

Peggy  
Livingston/ENF/R8/USEPA/U  
S

06/12/2006 04:27 PM

To Maureen O'Reilly/ENF/R8/USEPA/US@EPA, Richard  
Baird/ENF/R8/USEPA/US@EPA, Kathryn  
Hernandez/EPR/R8/USEPA/US@EPA

cc

bcc

Subject Fw: Noranda Settlement

Peggy Livingston  
Enforcement Attorney  
EPA Region 8  
303-312-6858 (phone)  
303-312-6953 (fax)

----- Forwarded by Peggy Livingston/ENF/R8/USEPA/US on 06/12/2006 04:27 PM -----



"John D. Fognani"  
<jfognani@fognanilaw.com>

06/12/2006 04:18 PM

To Mark.Elmer@usdoj.gov

cc

"Sue A. O'Neil" <soneil@fognanilaw.com>, Peggy  
Livingston/ENF/R8/USEPA/US@EPA

Subject RE: Noranda Settlement

Mark - Here is some additional information as requested.

The point person for notices will be the following:

Dave Hart  
Vice President - Reclamation  
Noranda Mining Inc.  
C/O Noranda Aluminum  
P O. Box 70  
New Madrid, MO  
63869

You may also want to add me below Dave as counsel. Since he is a VP he can also sign the agreement.

I can give you the final nod of approval by Friday. The client has asked us to wait for the final decision until the 15th. So we are close. Let me know if you have any questions or concerns.

Best regards. John

-----Original Message-----

From: John D. Fognani  
Sent: Monday, June 12, 2006 2:55 PM  
To: 'Mark.Elmer@usdoj.gov'  
Cc: Sue A. O'Neil; Livingston.Peggy@epamail.epa.gov  
Subject: RE: Noranda Settlement

Mark - I am seeking the information you requested. I hope to have it to you today or tomorrow. Let me know if you have any other questions or issues. John

-----Original Message-----

From: Mark.Elmer@usdoj.gov [mailto:Mark.Elmer@usdoj.gov]

Sent: Wednesday, June 07, 2006 10:20 AM  
To: John D. Fognani  
Cc: Sue A. O'Neil; Livingston.Peggy@epamail.epa.gov;  
Mark.Elmer@usdoj.gov  
Subject: RE: Noranda Settlement

John,

(1) I'm ok adding Falconbridge and Noranda Mining and their successors. If you want to specifically name any affiliates, we can consider those, but I am uncomfortable defining Settling Defendant by reference to the general term "affiliates," as it is vague and ambiguous.

(2) We have made changes to background section consistent with your comments.

(3) If you provide me with the name and address of a person to receive notices relating to the decree per Section XIII and the name and title of the corporate official signing on behalf of Settling Defendant, I will add these items to the draft decree, and then resend it to you for signature.

Thanks,

Mark

-----Original Message-----

From: jfognani@fognanilaw.com [mailto:jfognani@fognanilaw.com]  
Sent: Tuesday, June 06, 2006 4:51 PM  
To: Elmer, Mark (ENRD)  
Cc: soneil@fognanilaw.com  
Subject: Noranda Settlement

Mark - I received the correspondence today via facsimile. Please consider the following:

As the released parties I suggest using "Falconbridge Limited, Noranda Mining Inc. and their Affiliates and Successors."

In addition, we would like to add the following sentence in the background section for the Noranda Consent Decree:

"By entering into this Consent Decree, the mutual objective of the Parties is to resolve the claims of the United States against Settling Defendant for Past Response Costs, subject to the reservation of rights in Paragraph 14, by allowing Settling Defendant to make a cash payment as described herein."

Finally, we should change the title to "Partial Consent Decree" and made changes to the first paragraph to clarify that Complaint only seeks relief pursuant to Section 107 for past costs (as opposed to 106 and/or

future costs).

. This avoids the problem of having a consent decree that settles something less than the entire case.

Let me know your thoughts when you have a chance. Best regards. John



"Elmer, Mark (ENRD)"  
<MElmer@ENRD.USDOJ.GO  
V>

07/13/2006 05:27 PM

To Peggy Livingston/ENF/R8/USEPA/US@EPA  
cc Maureen O'Reilly/ENF/R8/USEPA/US@EPA, Kathryn  
Hernandez/EPR/R8/USEPA/US@EPA  
bcc

Subject Richardson past costs settlements

Peggy,

We now have signature pages for both Noranda and UPCM/Arco decrees. I am working on getting DOJ management approval for settlements. Would you please work on getting your management's approval and signature. Once you have signatures, please forward original signature pages to me.

Thanks,

Mark



<<SFX26C.pdf>> <<SFX27D.pdf>> SFX26C.pdf SFX27D.pdf

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

-----X	:	
UNITED STATES OF AMERICA,	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	Civil Action No.
	:	
UNITED PARK CITY MINES COMPANY;	:	
ATLANTIC RICHFIELD COMPANY;	:	
NORANDA MINING INC.; and	:	
FALCONBRIDGE LIMITED,	:	
	:	
<i>Defendants.</i>	:	
-----X	:	

**PARTIAL CONSENT DECREE**

**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of costs incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Richardson Flat Tailings Site located approximately 1.5 miles northeast of Park City, Utah ("the Site").

B. The Defendant that have entered into this Consent Decree (Falconbridge Limited and Noranda Mining Inc. or "Settling Defendant") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. By entering into this Consent Decree, the mutual objective of the Parties is to resolve the claims of the United States against Settling Defendants for Past Response Costs, subject to reservations of rights in Paragraph 14, by allowing Settling Defendants to make a cash payment as described herein.

D. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and Settling Defendants.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through March 1, 2006, plus accrued Interest on all such costs through such date.

k. "Plaintiff" shall mean the United States.

l. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

m. "Settling Defendants" shall mean Falconbridge Limited and Noranda Mining Inc., and their respective successors and assigns.

n. "Site" shall mean the Richardson Flat Tailings Site, CERCLIS ID # UTD980952840, which is located approximately 1.5 miles northeast of Park City, Utah and is part of a 650-acre property owned by United Park City Mines Company ("UPCM"). The Site is the location of a mine tailings impoundment that covers approximately 160 acres in the northwest corner of UPCM's property and includes diversion ditches, wetlands and other features. The Site is depicted generally on the map attached as Appendix A.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

## **V. PAYMENT OF RESPONSE COSTS**

4. Payment of Past Response Costs to EPA. Within five business days after Settling Defendants receive notice from the United States that this Consent Decree has been lodged, Settling Defendants shall deposit \$60,000 into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank (the "Escrow Account"). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run or if the Court's denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Defendants. If the Consent Decree is

entered by the Court, Settling Defendants shall, within 15 days thereof, cause the monies in the Escrow Account to be paid to EPA in accordance with Paragraphs 5 and 6 below.

5. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Utah following lodging of the Consent Decree.

6. At the time of payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 0894, DOJ case number 90-11-3-08764, and the civil action number.

7. The total amount to be paid pursuant to Paragraph 4 shall be deposited in the EPA Hazardous Substance Superfund.

#### **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

8. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraph 4 (Payment of Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. Stipulated Penalty.

a. If any amounts due under Paragraph 4 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$250 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 0894, DOJ Case Number 90-11-3-08764, and the civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

Regular Mail: Mellon Bank  
EPA Region 8  
Attn: Superfund Accounting  
Lockbox 360859  
Pittsburgh, Pennsylvania 15251-6859



Express Mail: EPA 360859  
Mellon Client Service Center, Room 670  
500 Ross Street  
Pittsburgh, Pennsylvania 15262-0001

or to such other address as EPA may designate in writing.

c. At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 0894, DOJ Case Number 90-11-3-08764, and the civil action number.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

12. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

## **VII. COVENANT NOT TO SUE BY PLAINTIFF**

13. Covenant Not to Sue by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants or their respective officers, directors, or employees (to the extent that the liability of such officers, directors, or employees arises solely from their legal status as officers, directors, or employees) pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of

their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants (and their respective officers, directors, and employees to the extent that the liability of such officers, directors, or employees arises solely from their legal status as officers, directors, or employees) and does not extend to any other person.

#### **VIII. RESERVATIONS OF RIGHTS BY UNITED STATES**

14. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 13. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

#### **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

15. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Utah, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

16. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

17. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

18. The waiver in Paragraph 17 shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendants. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

#### **X. RESERVATION OF RIGHTS BY SETTLING DEFENDANTS**

19. Settling Defendants reserve, and this Consent Decree is without prejudice to, all rights against the United States with respect to all matters not expressly included within the Settling Defendants' Covenant Not to Sue in Paragraph 15.

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

20. Except as provided in Paragraph 17, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 17, the Parties expressly reserve any and all rights

(including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

21. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs.

22. Settling Defendants agree that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 30 days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 14 days of service of the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ within 14 days of service or receipt of any Motion for Summary Judgment, and within 14 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

23. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

## **XII. RETENTION OF RECORDS**

24. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

25. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the

subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

26. Settling Defendants each hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to their potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against them regarding the Site and that they have fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

### **XIII. NOTICES AND SUBMISSIONS**

27. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

#### **As to the United States:**

##### **As to DOJ:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-08764)  
P.O. Box 7611  
Washington, D.C. 20044-7611

##### **As to EPA:**

Margaret (Peggy) J. Livingston  
Senior Enforcement Attorney  
U.S. Environmental Protection Agency, Region 8  
999 Eighteenth Street, Suite 300 (8-ENFL)  
Denver, CO 80202-2466

Maureen O'Reilly  
EPA Enforcement Specialist  
Richardson Flat Superfund Site  
U.S. Environmental Protection Agency, Region 8  
999 Eighteenth Street, Suite 300 (8ENF-RC)  
Denver, CO 80202-2466

As to Settling Defendants:

David Hart  
Vice President — Reclamation  
Noranda Mining Inc.  
c/o Noranda Aluminum  
P.O. Box 70  
New Madrid, MO 63869

With a copy to:

John D. Fognani  
Fognani & Faught, PLLC  
1700 Lincoln Street, Suite 2222  
Denver, CO 80203

**XIV. RETENTION OF JURISDICTION**

28. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XV. INTEGRATION/APPENDICES**

29. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding of Defendant with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

**XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

30. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants

consent to the entry of this Consent Decree without further notice.

31. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XVII. SIGNATORIES/SERVICE**

32. The Deputy Section Chief, Environmental Enforcement Section of the United States Department of Justice, and each undersigned representative of a Settling Defendant to this Consent Decree certify that they are authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

33. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

34. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

#### **XVIII. FINAL JUDGMENT**

35. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2006.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. United Park City Mines Co., et al., relating to the Richardson Flat Tailings Site.

**FOR THE UNITED STATES OF AMERICA:**

**UNITED STATES DEPARTMENT OF JUSTICE**

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division

Date: \_\_\_\_\_

\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: \_\_\_\_\_

\_\_\_\_\_  
MARK C. ELMER  
Trial Attorney  
U.S. Department of Justice  
Environmental Enforcement Section  
1961 Stout Street, 8<sup>th</sup> Floor  
Denver, CO 80294  
(303) 844-1352 (PHONE)  
(303) 844-1350 (FAX)



**UNITED STATES ATTORNEY'S OFFICE  
FOR THE DISTRICT OF UTAH**

**STEPHEN J. SORENSON**  
United States Attorney  
185 South State Street, Suite 400  
Salt Lake City, UT 84111

Date: \_\_\_\_\_

\_\_\_\_\_  
**DANIEL PRICE**  
Assistant United States Attorney  
District of Utah  
185 South State Street, Suite 400  
Salt Lake City, UT 84111  
(801) 325-3234

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: \_\_\_\_\_

\_\_\_\_\_  
**ROBERT E. ROBERTS**  
Regional Administrator, Region 8  
U.S. Environmental Protection Agency  
999 Eighteenth Street, Suite 300  
Denver, CO 80202


Date: \_\_\_\_\_

\_\_\_\_\_  
**MARGARET (PEGGY) J. LIVINGSTON**  
Senior Enforcement Attorney  
U.S. Environmental Protection Agency, Region 8  
999 Eighteenth Street, Suite 300 (8-ENFL)  
Denver, CO 80202

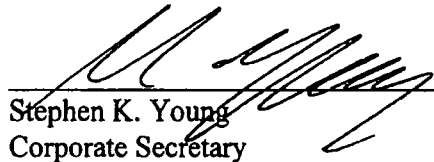
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. United Park City Mines Co., et al., relating to the Richardson Flat Tailings Site.

**FOR DEFENDANT FALCONBRIDGE LIMITED**

Date: July 6, 2006

  
\_\_\_\_\_  
Jeffery A. Snow  
Senior Vice President and General Counsel  
Falconbridge Limited

Date: July 6, 2006

  
\_\_\_\_\_  
Stephen K. Young  
Corporate Secretary  
Falconbridge Limited

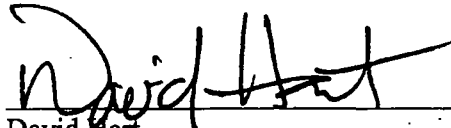
Agent Authorized to Accept Service on Behalf of Above-signed Party:

John D. Fognani  
Fognani & Faught, PLLC  
1700 Lincoln Street, Suite 2222  
Denver, CO 80203

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. United Park City Mines Co., et al., relating to the Richardson Flat Tailings Site.

**FOR DEFENDANT NORANDA MINING INC.**

Date: 07/06/06

  
\_\_\_\_\_  
David Hart

Director and Vice President — Reclamation  
Noranda Mining Inc.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

John D. Fognani  
Fognani & Faught, PLLC  
1700 Lincoln Street, Suite 2222  
Denver, CO 80203



"Elmer, Mark (ENRD)"  
<MElmer@ENRD.USDOJ.GOV  
V>

06/27/2006 03:45 PM

To jfognani@fognanilaw.com

cc Peggy Livingston/ENF/R8/USEPA/US@EPA, Maureen  
OReilly/ENF/R8/USEPA/US@EPA, Kathryn  
Hernandez/EPR/R8/USEPA/US@EPA, "Elmer, Mark

bcc

Subject RE: Richardson Flat Past Costs

John:

We might be there. If you approve defining "Settling Defendant" to include Falconbridge, as the way of providing protections of decree to Falconbridge, then I think all I need is for you to have either Richard Anderson or David Hart sign decree on behalf of Noranda Mining. If possible, I'd appreciate getting at least the faxed version of your signature page by Friday morning so that I can submit both decrees (yours and United Park/ARCOs) to my management for approval at the same time. I am attaching another copy of CD for your convenience. If this works, please type in the appropriate signing official's name on Noranda Mining's signature page, have that person sign decree, and then fax (by Friday) and mail original to me.

If you believe both Noranda Mining and Falconbridge should be signatories to decree (rather than simply including Falconbridge in definition of Settling Defendant), then we should talk. If this is the case, please call me at your earliest convenience.

Thanks,

Mark

-----Original Message-----

From: jfognani@fognanilaw.com [mailto:jfognani@fognanilaw.com]  
Sent: Tuesday, June 27, 2006 3:17 PM  
To: Elmer, Mark (ENRD)  
Cc: Livingston.Peggy@epamail.epa.gov; oreilly.maureen@epa.gov;  
Hernandez.Kathryn@epamail.epa.gov  
Subject: RE: Richardson Flat Past Costs

Mark -- What further do you need from our side. I believe I forwarded the names for the signature page and believe we are on target on the other issues we discussed. Let me know. John

-----Original Message-----

From: Mark.Elmer@usdoj.gov [mailto:Mark.Elmer@usdoj.gov]  
Sent: Tuesday, June 27, 2006 2:48 PM  
To: John D. Fognani  
Cc: Livingston.Peggy@epamail.epa.gov; oreilly.maureen@epa.gov;  
Mark.Elmer@usdoj.gov; Hernandez.Kathryn@epamail.epa.gov  
Subject: Richardson Flat Past Costs

PRIVILEGED AND CONFIDENTIAL  
SETTLEMENT COMMUNICATION

John:

I'd like to get this wrapped up this week. I have a signed consent decree from United Park and ARCO, which I plan on submitting to my management for approval no later than this Friday morning. If your client would like to participate in settlement now is the time to do it. After Friday morning, I'll need to reconsider whether to hold open the Government's settlement offer (which as usual is still subject to management approval).

Thanks,

Mark



#152304-v2-richardson\_-\_past\_costs\_decree\_for\_noranda.WPD



"Elmer, Mark (ENRD)"  
<MElmer@ENRD.USDOJ.GO  
V>

06/27/2006 04:41 PM

To jfognani@fognanilaw.com

cc Peggy Livingston/ENF/R8/USEPA/US@EPA, Maureen  
OReilly/ENF/R8/USEPA/US@EPA, Kathryn  
Hernandez/EPR/R8/USEPA/US@EPA, "Christen, Corrine

bcc

Subject RE: Richardson Flat Past Costs

I thought we had agreed that they would both be considered "Settling Defendants", which would be accomplished by including both within the definition of Settling Defendant. Are you asking that both be Parties to the Decree, so that we would actually name Falconbridge as a Defendant (both in Complaint and Consent Decree)? I frankly haven't considered this, but do you believe Falconbridge has some sort of successor liability for Noranda Mining? If it does not have successor liability, what would be the basis for its liability and, thereby, the basis for a direct claim against it?

Also, can you provide for me the following two pieces of information about Noranda Mining Inc.:

- (1) Where is it incorporated? And
- (2) Where is its principle place of business.

Thanks.

-----Original Message-----

From: jfognani@fognanilaw.com [mailto:jfognani@fognanilaw.com]  
Sent: Tuesday, June 27, 2006 3:54 PM  
To: Elmer, Mark (ENRD)  
Cc: Livingston.Peggy@epamail.epa.gov; oreilly.maureen@epa.gov;  
Hernandez.Kathryn@epamail.epa.gov  
Subject: RE: Richardson Flat Past Costs

I thought we had already agreed to have both companies on the Decree. Please advise if this is not the case. John

-----Original Message-----

From: Mark.Elmer@usdoj.gov [mailto:Mark.Elmer@usdoj.gov]  
Sent: Tuesday, June 27, 2006 3:46 PM  
To: John D. Fognani  
Cc: Livingston.Peggy@epamail.epa.gov; oreilly.maureen@epa.gov;  
Hernandez.Kathryn@epamail.epa.gov; Mark.Elmer@usdoj.gov  
Subject: RE: Richardson Flat Past Costs

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Mark.Elmer@usdoj.gov; Hernandez.Kathryn@epamail.epa.gov  
Subject: Richardson Flat Past Costs

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Thanks,

Mark





Peggy  
Livingston/ENF/R8/USEPA/US  
S

10/23/2006 09:40 AM

To Maureen O'Reilly/ENF/R8/USEPA/US@EPA, Kathryn  
Hernandez/EPR/R8/USEPA/US@EPA

cc

bcc

Subject Fw: Richardson Flat Site

Attorney-Client Privileged  
Attorney Work Product

Peggy Livingston  
Enforcement Attorney  
EPA Region 8  
303-312-6858 (phone)  
303-312-6953 (fax)

----- Forwarded by Peggy Livingston/ENF/R8/USEPA/US on 10/23/2006 09:39 AM -----



"Christen, Corrine (ENRD)"  
<CChriste@ENRD.USDOJ.GOV>

10/20/2006 03:44 PM

To Peggy Livingston/ENF/R8/USEPA/US@EPA

cc "Elmer, Mark (ENRD)" <MElmer@ENRD.USDOJ.GOV>

Subject Richardson Flat Site

Peggy,

The attached motion to enter consent decrees was filed today.

Corrine

<<#166839-v1-park\_city\_mines\_-\_docket\_6\_-\_attachment\_-\_proposed\_order.PDF>>

<<#166838-v1-park\_city\_mines\_-\_docket\_6\_-\_attachment\_-\_cos.PDF>>

<<#166837-v1-park\_city\_mines\_-\_docket\_6\_-\_motion\_to\_enter\_CD.PDF>>

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#166839-v1-park\_city\_mines\_-\_docket\_6\_-\_attachment\_-\_proposed\_order.PDF



#166838-v1-park\_city\_mines\_-\_docket\_6\_-\_attachment\_-\_cos.PDF



#166837-v1-park\_city\_mines\_-\_docket\_6\_-\_motion\_to\_enter\_CD.PDF



kcgee@unitedpark.com  
05/20/2006 05:48 PM

To EPAKathrynHernandez@tmo.blackberry.net  
cc Kathryn Hernandez/EPR/R8/USEPA/US@EPA,  
kcgee@unitedpark.com, kcgee@xmission.com  
bcc  
Subject Re: RD/RA

Kathy:

Got you comments. I will be looking at them more closely tomorrow.

I have a rather serious 2-part question though that relates to Watershed and Richardson in an indirect way.

first part: When United Park completes the purchase of the Silver Maple Claim from the BLM, will we be required to clean to 300 ppm as we are in the triangle wetlands below the impoundment on Richardson??

Second Part: If United Park does not purchase the BLM Silver Maple Claim will BLM be able to clean up the claims as they proposed in their reports? That is, remove about 5000 yards or so of contaminated material and then leave the remaining undisturbed??

Sorry to put you on the spot with these questions. The reason I am asking these questions is that our NRDA consultant was on site Thursday and Friday. He says that cleaning up that wetland below the embankment will do more damage than good at this point. The perceived gains from complete removal are insignificant when considering the damage from removal. He believes that he can make a good case to leave them and also convince FWS that it is a better thing to do. He says the same about the impoundment wetlands on top of the impoundment. He says with some medium effort modifications to both wetlands, gains could be made that would outpace anything gained through complete removal. Our remediation efforts will create a lot of new wetland areas.

Do you think it would be possible to talk about Richardson for a little bit before our meeting on Monday??

Thanks for turning this around so quickly.

Kerry

On May 20 21:11, "Kathryn Hernandez" <EPAKathrynHernandez@tmo.blackberry.net> wrote:

>

> Subject: RD/RA

>

> No significant issues. Is there a map that will be included identifying all the activities at the various remedial sites? What is the acceptable concentration range for the Bevill-exempt mine waste? In section 1.1 identify the metals that will be monitored in the surface water. What will the action be if there is an exceedance of water quality standards?

> When will the Flood plain tails be remediated? In section 1.2 document the range of concentration found of both arsenic and lead, not just the average.

>

> I have a problem with the word "majority" on page 8. Seems like it should be "all".

>

> Page 12 should be "existing" water quality standards rather than

"applicable"

>

> What percent of the total remedial cost is attributed to the impoundment area?

>

> Make sure appendix B includes sampling frequency, notification of results, and ARARs.

>

> Section 8.1 , should add "and any necessary removal" after sampling and assessment of materials.

>

> That's it I think.

>

> Kathy

> Sent from my BlackBerry wireless handheld.

>

>



Kathryn Hernandez  
<EPAKathrynHernandez@tmo  
.blackberry.net>

05/20/2006 03:11 PM

Please respond to  
EPAKathrynHernandez@tmo.b  
lackberry.net

To Kerry Gee <kcgee@unitedpark.com>

cc Kathryn Hernandez/EPR/R8/USEPA/US@EPA

bcc

Subject RD/RA

No significant issues. Is there a map that will be included identifying all the activities at the various remedial sites? What is the acceptable concentration range for the Bevill-exempt mine waste? In section 1.1 identify the metals that will be monitored in the surface water. What will the action be if there is an exceedance of water quality standards? When will the Flood plain tails be remediated? In section 1.2 document the range of concentration found of both arsenic and lead, not just the average.

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Section 8.1 , should add "and any necessary removal" after sampling and assessment of materials.

That's it I think.

Kathy

Sent from my BlackBerry wireless handheld.

-----X

UNITED STATES OF AMERICA,	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	Civil Action No.
	:	
UNITED PARK CITY MINES COMPANY;	:	
ATLANTIC RICHFIELD COMPANY;	:	
FALCONBRIDGE LIMITED; and	:	
NORANDA MINING INC.,	:	
	:	
<i>Defendants.</i>	:	
	:	
-----X	:	

## I. BACKGROUND

C. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon and inures to the benefit of the United States and the Settling Defendants and their respective successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and Settling Defendants.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through March 1, 2006, plus accrued Interest on all such costs through such date.

k. "Plaintiff" shall mean the United States.

l. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

m. "Settling Defendants" shall mean United Park City Mines Company ("UPCM") and the Atlantic Richfield Company ("ARCO"), and their respective successors and assigns.

n. "Site" shall mean the Richardson Flat Tailings Site, CERCLIS ID # UTD980952840, which is located approximately 1.5 miles northeast of Park City, Utah and is part of a 650 acre property owned by UPCM. The Site is the location of a mine tailings impoundment that covers approximately 160 acres in the northwest corner of UPCM's property and includes diversion ditches, wetlands and other features. The Site is depicted generally on the map attached as Appendix A.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

## **V. PAYMENT OF RESPONSE COSTS**

4. Payment of Past Response Costs to EPA. Within five business days after Settling Defendants receive notice from the United States that this Consent Decree has been lodged, Settling Defendants shall deposit \$400,000 into an escrow account bearing interest on commercially reasonable terms, in a federally chartered bank (the "Escrow Account"). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run, or if the Court's denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Defendants. If the Consent Decree is entered by the Court, Settling Defendants shall, within 15 days thereof, cause the monies in the Escrow Account to be paid to EPA in accordance with Paragraphs 5 and 6 below.

5. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Utah following lodging of the Consent Decree.

6. At the time of payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 0894, DOJ case number 90-11-3-08764, and the civil action number.

7. The total amount to be paid pursuant to Paragraph 4 shall be deposited in the EPA Hazardous Substance Superfund.

#### **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

8. Interest on Late Payments. If any Settling Defendant fails to make any payment under Paragraph 4 (Payment of Response Costs) by the required due date, Interest shall accrue on the unpaid balance from the due date through the date of payment.

9. Stipulated Penalty.

a. If any amounts due under Paragraph 4 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$500 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 0894, DOJ Case Number 90-11-3-08764, and the civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

Regular Mail:

Mellon Bank  
EPA Region 8  
Attn: Superfund Accounting  
Lockbox 360859  
Pittsburgh, Pennsylvania 15251-6859



Or Express Mail:

EPA 360859  
Mellon Client Service Center, Room 670  
500 Ross Street  
Pittsburgh, Pennsylvania 15262-0001

or to such other address as EPA may designate in writing.

c. At the time of payment of any penalties to EPA, each Settling Defendant shall send notice that such payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 0894, DOJ Case Number 90-11-3-08764, and the civil action number.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. The obligations of Settling Defendants to pay any amounts owed to EPA under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendants to make the payments required under this Decree, the remaining Settling Defendant shall be responsible for such payments.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

**VII. COVENANT NOT TO SUE BY PLAINTIFF**

14. Covenant Not to Sue by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants or their respective officers, directors, or employees (to the extent that the liability of such officers, directors, or employees arises solely

from their legal status as officers, directors, or employees) pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants (and their respective officers, directors, and employees to the extent that the liability of such officers, directors, or employees arises solely from their legal status as officers, directors, or employees) and does not extend to any other person.

### **VIII. RESERVATIONS OF RIGHTS BY UNITED STATES**

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 14. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

### **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

16. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Utah, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

17. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

18. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

19. The waiver in Paragraph 18 shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendants. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

## **X. RESERVATION OF RIGHTS BY SETTLING DEFENDANTS**

20. The Settling Defendants reserve, and this Consent Decree is without prejudice to, all rights against the United States with respect to all matters not expressly included within the Settling Defendants' Covenant Not to Sue by Settling Defendants in Paragraph 16.

## **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

21. Except as provided in Paragraph 18, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 18, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

22. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree means Past Response Costs as defined herein and the response actions at the Site for which the Past Response Costs were incurred. The contribution protection set forth in this Paragraph is intended to provide the broadest protection afforded by CERCLA for the matters addressed in this Consent Decree.

23. Settling Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, they will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

## **XII. RETENTION OF RECORDS**

25. Until ten (10) years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in

their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

26. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies to only a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

27. Settling Defendants each hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to their potential liability regarding the Site since notification of alleged liability by the United States or the State or the filing of suit against them regarding the Site and that they have fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

### **XIII. NOTICES AND SUBMISSIONS**

28. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

#### **As to the United States:**

##### **As to DOJ:**

Chief, Environmental Enforcement Section  
U.S. Department of Justice (DJ # 90-11-3-08764)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Margaret (Peggy) J. Livingston  
Senior Enforcement Attorney  
U.S. Environmental Protection Agency, Region 8  
999 Eighteenth Street, Suite 300 (8-ENFL)  
Denver, CO 80202-2466

Maureen O'Reilly  
EPA Enforcement Specialist  
Richardson Flat Superfund Site  
U.S. Environmental Protection Agency, Region 8  
999 Eighteenth Street, Suite 300 (8ENF-RC)  
Denver, CO 80202-2466

As to Settling Defendants:

As to United Park City Mines Company:

Kerry C. Gee  
United Park City Mines Company  
P.O. Box 1450  
Park City, Utah 84060

Kevin R. Murray, Esq.  
Chapman and Cutler, LLP  
136 S. Main, Suite 1000  
Salt Lake City, Utah 84101

As to Atlantic Richfield:

Pamela Kaye  
Atlantic Richfield Company  
317 Anaconda Road  
Butte, MT 59701

Sheila D'Cruz  
BP America, Inc.  
4101 Winfield Road  
Mail Code 4 West  
Warrenville, IL 60555

#### **XIV. RETENTION OF JURISDICTION**

29. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

#### **XV. INTEGRATION/APPENDICES**

30. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

#### **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

31. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

32. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XVII. SIGNATORIES/SERVICE**

33. The Deputy Section Chief, Environmental Enforcement Section of the United States Department of Justice, and each undersigned representative of EPA and a Settling Defendant to this Consent Decree certify that they are authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

34. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

35. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

**XVIII. FINAL JUDGMENT**

36. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2006.

\_\_\_\_\_  
United States District Judge



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. United Park City Mines Co., et al., relating to the Richardson Flat Tailings Site.

**FOR THE UNITED STATES OF AMERICA:**

**UNITED STATES DEPARTMENT OF JUSTICE**

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division

\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: \_\_\_\_\_

\_\_\_\_\_  
MARK C. ELMER  
Trial Attorney  
U.S. Department of Justice  
Environmental Enforcement Section  
1961 Stout Street, 8<sup>th</sup> Floor  
Denver, CO 80294

Date: \_\_\_\_\_

**UNITED STATES ATTORNEY'S OFFICE  
FOR THE DISTRICT OF UTAH**

STEPHEN J. SORENSON  
United States Attorney  
District of Utah

Date: \_\_\_\_\_

---

DANIEL PRICE  
Assistant United States Attorney  
District of Utah  
185 South State Street, Suite 400  
Salt Lake City, UT 84111

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

\_\_\_\_\_  
**ROBERT E. ROBERTS**  
Regional Administrator, Region 8  
U.S. Environmental Protection Agency  
999 Eighteenth Street, Suite 300  
Denver, CO 80202

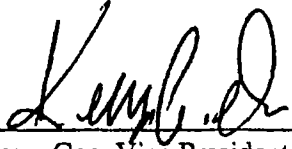
Date: \_\_\_\_\_

\_\_\_\_\_  
**MARGARET (PEGGY) J. LIVINGSTON**  
Senior Enforcement Attorney  
U.S. Environmental Protection Agency, Region 8  
999 Eighteenth Street, Suite 300 (8-ENFL)  
Denver, CO 80202

Date: \_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. United Park City Mines, et al., relating to the Richardson Flat Tailings Site.

**FOR DEFENDANT UNITED PARK CITY MINES COMPANY:**

  
\_\_\_\_\_  
Kerry Gee, Vice President

Date: 6-12-06

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Kevin R. Murray  
Chapman and Cutler LLP  
1000 Kearns Building  
136 South Main Street  
Salt Lake City, Utah 84104-1645

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. United Park City Mines, et al., relating to the Richardson Flat Tailings Site.

**FOR DEFENDANT ATLANTIC RICHFIELD COMPANY:**



Robin Bullock  
Atlantic Richfield Company  
317 Anaconda Road  
Butte, MT 59701

Date: *June 6, 2006*

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Sheila D'Cruz  
BP America, Inc.  
4101 Winfield Road  
Mail Code 4 West  
Warrenville, IL 60555